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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 09-16335 (BRL)

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In the Matter of:

FAIRPOINT COMMUNICATIONS, INC., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

October 20, 2010
10:22 AM

B E F O R E:
HON. BURTON R. LIFLAND
U.S. BANKRUPTCY JUDGE

1
2 HEARING re FairPoint's Second Motion Pursuant To Bankruptcy
3 Code Section 1121(d) For Extension Of Exclusivity.
4

5 HEARING re FairPoint Communication's Motion for Authorization
6 to Assume Agreement, as Amended, With Nitel, Inc. Pursuant To
7 Bankruptcy Code Sections 105(a) and 365 and Bankruptcy Rule
8 6006.
9

10 HEARING re Debtors' Motion for Order, Pursuant to Bankruptcy
11 Code Section 105(a) and Federal Rule of Bankruptcy Procedure
12 Rule 9019, for an Order Authorizing Settlement of Certain
13 Estate Claims Against Verizon Wireless Regarding E-911 Service.
14

15 HEARING re FairPoint's First Omnibus Motion to Estimate the
16 Maximum Allowed Amount of Proofs of Claim Pursuant to
17 Bankruptcy Code Sections 105(a) and 502(c).
18

19 HEARING re Motion To Reconsider And Vacate Pursuant To 11
20 U.S.C. Sections 105, 502(j) And Bankruptcy Rule 9024 filed by
21 City of Claremont.
22

23 HEARING re FairPoint's Second Omnibus Motion to Estimate the
24 Maximum Allowed Amount of Proofs of Claim Pursuant to
25 Bankruptcy Code Sections 105(a) and 502(c).

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HEARING re FairPoint's Motion for Entry of Order Pursuant To
Bankruptcy Rule 2004 Authorizing Discovery from segNET
Technologies, Inc. and segTEL, Inc.

Transcribed by: Penina Wolicki

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P R O C E E D I N G S

THE CLERK: FairPoint Communications.

(Pause)

MR. GROGAN: Good morning, Your Honor. James Grogan from Paul Hastings on behalf of FairPoint. Your Honor, we have a rather long docket this morning. Mr. Finestone from Quinn Emanuel only has one matter, and so with Your Honor's permission, I'd ask that his matter go forward at the beginning, and then he can go ahead and leave.

THE COURT: Sure.

MR. FINESTONE: Good morning, Your Honor. Benjamin Finestone, Quinn Emanuel Urquhart & Sullivan. We're conflicts counsel to the debtors-in-possession. We have -- we're presenting today the debtors' motion seeking approval of an agreement with the debtors on one side and Verizon Wireless on the other side, relating to so-called E-911 service charges. The motion was filed on September 7th --

THE COURT: What letter is that in your tab?

THE CLERK: Judge, it's number 3 in the uncontested.

THE COURT: They're not numbered. They're by the alphabet.

MR. GROGAN: Just a second, Your Honor. Your Honor it's number 3.

MR. FINESTONE: Number 3 in the binder.

THE COURT: Got it.

1 MR. FINESTONE: The --

2 THE COURT: By the way, now with the two binders, you
3 exceed Weil Gotshal.

4 MR. GROGAN: I knew that was coming, Your Honor.

5 MR. FINESTONE: Your Honor, this 9019 motion was filed
6 on September 7th, and the objection deadline passed on the 22nd
7 of September. There are no objections filed.

8 E-911 or enhanced 911 services describe services that
9 automatically convey to the service provider the location of
10 the individual dialing for emergency 911 assistance. It also
11 automatically routes those calls to the appropriate response
12 center. Wireless service providers, such as FairPoint on the
13 one side and Verizon Wireless on the other side, provide these
14 services to each other's customers and then bill each other for
15 reimbursement of those services, as the operative agreements
16 may provide.

17 The claims that are the subject of this settlement
18 agreement were claims for services provided by former Verizon
19 entities that were the subject of the spinoff and merger
20 transaction, now FairPoint entities. Services were provided to
21 customers of an entity called RCC Atlantic that subsequently
22 was merged into Verizon. So when all is said and done, these
23 are claims for services provided to customers of Verizon
24 affiliates by certain of the debtors.

25 Per the debtors' books and records, the gross amount

1 of these claims is 1.4 million dollars. Verizon has several --
2 Verizon disputes the amount of those charges as well as any
3 liability for those charges. Verizon's disputes are twofold;
4 primarily they dispute that the governing interconnection
5 agreements between the service providers provide for E-911
6 services for the billing and reimbursement of E-911 services,
7 and they also dispute the amount. And admittedly, some of
8 these charges go back prior to 2006.

9 The agreement that we're asking the Court to approve
10 today provides for a payment of 984,000 dollars to the estates.
11 This amount reflects -- represents seventy percent of the gross
12 amount. The debtors submit that in view of Verizon's disputes
13 to the charges and to the liability in the first instance, as
14 well as the inherent risky nature of litigation, that this
15 seventy-percent payment indicates that this settlement is in
16 the estate's best interests, fair and equitable, and within the
17 range of reasonableness.

18 One other point I'd like to note. The agreement does
19 contain releases. They're narrowly tailored. They're mutual.
20 And they relate only to the E-911 services that are the subject
21 of this agreement. Importantly, the agreement doesn't release
22 any of the estate's claims that are being retained by the
23 debtors or that are being transferred -- to be transferred to
24 the litigation trust for the benefit of the creditors.

25 We have shared this agreement with the counsel for the

1 secured lenders as well as the unsecured creditors' committee,
2 and they don't object to the agreement. In light of the
3 circumstances and the amount of consideration to be paid to the
4 estates, we'd ask the Court to approve the settlement
5 agreement.

6 THE COURT: Does anyone want to be heard?

7 The settlement agreement does appear more than
8 cosmetically to be fair and reasonable under the circumstances.
9 It avoids litigation and does result in a substantial income
10 into the estate. The application is granted.

11 MR. FINESTONE: Thank you, Your Honor.

12 THE COURT: You got an order?

13 MR. FINESTONE: I have a form of order and a disk, if
14 I may approach?

15 THE COURT: I'll entertain it. I've approved the
16 order.

17 MR. GROGAN: Your Honor, the next matter that we would
18 like to take up, because we have a number of opposing counsel
19 here today, is the first omnibus motion to estimate proofs of
20 claim. That is at binder -- it's at number 4 in our binder.
21 And the subject matter -- before I do that, Your Honor, I
22 apologize. I do have a couple of guests here with me today
23 that I wanted to introduce to Your Honor. We have here today
24 with me Susan Sowell, FairPoint's vice president and assistant
25 general counsel. And then also, assisting me with the argument

1 today on the first omnibus motion to estimate is Scott Harris,
2 who is an attorney from McLane, Graf, Raulerson & Middleton in
3 New Hampshire, and he will be arguing a section of our argument
4 on New Hampshire law.

5 Your Honor, the first omnibus motion to estimate
6 addresses a number of real property tax claims that were filed
7 by municipalities in the state of New Hampshire. The Court's
8 already considered this as an initial matter and entered an
9 order by default with respect to claims filed by towns who did
10 not object to the motion.

11 Presently, there are eight towns who have filed
12 objections. Of those, today we are taking up our motion with
13 respect to seven of those towns. They are the Town of
14 Claremont, Town of Concord, Hinsdale, Newmarket, Raymond, Salem
15 and Seabrook.

16 There's also Town of Conway. Conway is in a slightly
17 different procedural posture. The issue -- there's really two
18 issues with Conway which we will take up with Your Honor at a
19 future date. One is the appropriate valuation for the real
20 property tax. And the second is the fact that the Court in
21 Conway, violated the automatic stay by adjudicating the case
22 before it in December of 2009, after the company filed for
23 bankruptcy.

24 There's an ongoing debate with counsel for Conway as
25 to whether or not the automatic stay applies, which somewhat

1 relates to these other towns. But given the fact that the
2 fundamental equal protection issue doesn't apply to Conway, we
3 thought it better to just put that off to the next hearing, and
4 we'll deal with the seven towns today, who are squarely, in our
5 view, violating the equal protection clause.

6 Your Honor, just for background, Town of Claremont
7 also has a slightly unique posture in the sense that Claremont
8 did not actually timely respond to the motion. And so, Your
9 Honor's initial order granting our motion to estimate fixed the
10 allowed amount of their claim at \$1,062.30. They have filed a
11 motion to reconsider and vacate that prior order. And, Your
12 Honor, if I may, I'll take that up first as part of our
13 argument, and then flow into the remainder of the issues that
14 are raised by the towns.

15 Your Honor, on the motion for reconsideration, I think
16 it's well-established, and we've cited the authorities in our
17 brief, that there are three factors that apply when deciding a
18 motion to reconsider the expungement or disallowance of a proof
19 of claim: whether the default was willful; whether the movant
20 has a meritorious defense; and the level of prejudice that may
21 inure to the nondefaulting party if the relief is granted.

22 Your Honor in opposition -- or in support of their
23 motion to vacate, the Town has proffered the declaration of the
24 City Attorney for the Town of Claremont. Nothing in the
25 declaration suggests that the town maintains the kind of mail

1 processing procedures that would give rise to rebuttable
2 evidence that the presumption of receipt has occurred. When we
3 mailed the motion to the proper address -- I don't think that's
4 contested -- it was not returned undeliverable. All that's at
5 issue here is their word that they didn't get it. And it's
6 well-established that you can't just -- you cannot just file a
7 declaration saying I didn't get the motion, so the Court should
8 vacate its prior order adjudicating the claim.

9 Your Honor, I think also, if reconsideration is
10 allowed in a case like this, it will open Pandora's Box to the
11 reconsideration of more than 6,000 claims that Your Honor has
12 already ruled on. We have filed almost seventy omnibus
13 objections to claims. The claims process is well underway.
14 It's very important to the ultimate success of this case. And
15 to allow parties-in-interest to come back to court and just
16 simply say I didn't get what the debtor sent me would be
17 tremendously prejudicial to the company.

18 In addition, Your Honor, we don't think Claremont has
19 a meritorious defense. This is the same issue that every town
20 has raised. They have various nuanced arguments as to why they
21 don't fall within the clear precedent of the New Hampshire
22 Supreme Court in Rochester. Rochester clearly said that a town
23 that wants to impose a real property tax on the dirt in the
24 right-of-way that is used by some party, whether it's FairPoint
25 or an electric company or a cable company or a water company,

1 they have to tax every party in the right-of-way.

2 What the towns do is they want to say well -- in
3 Claremont's case they say we tax every party except the
4 electric company, but we don't have to tax the electric company
5 because the tax that we charge to FairPoint is under 72:23 of
6 Revised Statutes Annotated, and we can tax the electric company
7 under 72:8 of the New Hampshire Statutes. This was the exact
8 issue in Rochester. The Supreme Court of New Hampshire has
9 already said you cannot tax an electric company under 72:8 and
10 satisfy the equal protection requirements. You have to tax the
11 electric company under 72:23.

12 Now, the town says, but we do tax under 72:23. And
13 they filed a bunch of bills where Your Honor can look at the
14 valuation -- and there's a category that says "Land" and beside
15 land it says "Zero dollars". That means they're not taxing the
16 electric company for the land. So, Your Honor, they cannot --
17 they have no defense. They are squarely within the New
18 Hampshire Supreme Court precedent.

19 The other towns raise additional arguments as well
20 which I'll take up in turn. They're largely procedural. First
21 of all they challenge the appropriateness of estimation. Your
22 Honor, I think, based on the New Hampshire Supreme Court
23 precedent here, it's clear that there is a state law
24 contingency that must be met before the town can impose the
25 tax. And that contingency is that they apply the tax

1 Constitutionally by assessing it against each of the parties
2 that use the right-of-way.

3 The Supreme Court established that contingency in
4 2007. The towns still have not taxed each of the parties in
5 the right-of-way. They have all these arguments as to why they
6 don't have to. But in our view, they still have not met the
7 condition precedent to imposing the tax on FairPoint.
8 Therefore, the claims are still contingent. Once they start
9 assessing tax against ComCast, then I think our argument that
10 these are contingent go away. But for right now, these are
11 contingent claims. The Supreme Court said here's the
12 conditions to imposing this tax.

13 Your Honor, they also attack Your Honor's -- the
14 propriety of having Your Honor actually rule on these claims.
15 Claims adjudication, as Your Honor is well aware, is a core
16 function of bankruptcy courts. And the towns argue that you
17 should abstain because issues of state law predominate. That's
18 really not the case. The Supreme Court of New Hampshire has
19 already established the precedent that defines the parameters
20 of applying this tax. The towns don't meet those parameters.
21 Your Honor can read Rochester, apply New Hampshire law, and
22 determine that the tax is not owed. There is no need to defer
23 to further state court litigation here.

24 In addition, the -- I think the other factors -- and
25 we go through all of them in our brief -- I won't belabor the

1 point, but I think each of the factors that are considered by
2 Courts in connection with abstention, weigh against applying --
3 weigh against this Court abstaining. Here, as I mentioned,
4 this is a core proceeding. The convenience of the parties, I
5 think, is also a significant factor to consider. Your Honor,
6 we have seven towns here, each of which has a separate tribunal
7 that we would have to go litigate these claims in. These state
8 courts are burdened with hundreds of cases. We've pointed out
9 in our brief, one of them has actually apologized because they
10 can't even put us on the docket until sometime in 2011, and
11 that's for motions for summary judgment. God only knows when
12 we would get to the trial.

13 So, Your Honor, we would have significant delay
14 getting these cases heard in state court. We'd have to do it
15 seven different times. It's going to multiply the cost
16 exponentially. Whereas here, we can handle these claims all at
17 once. It's a single legal issue.

18 Your Honor, also the towns challenge the fact that the
19 automatic stay applies. I don't think that's debatable. They
20 cite to a First Circuit case, Hague v. United States. But I
21 think any close reading of Hague reveals that the First Circuit
22 had a case in front of it where the taxpayer-debtor was
23 actually suing the government for damages. That's simply not
24 the case here. This taxpayer is not seeking damages. It has
25 brought these abatement petitions to the superior courts in New

1 Hampshire as a defensive measure, as essentially an objection
2 to the tax claims. That's the same thing we're doing here.

3 We do not think we owe the tax, and the only remedy
4 for relief from the tax assessment is to petition the superior
5 court to abate the tax. This is no different than any other
6 proof of claim in bankruptcy where the taxing authority is
7 trying to collect money. And that's the kind of thing that
8 Section 362 was meant to stay. I don't think any of their
9 arguments controvert that simple axiomatic fact.

10 Your Honor, Concord has also raised the issue of
11 judicial estoppel. There's really no grounds for judicial
12 estoppel here, because there was never any sort of a ruling in
13 state court that affected any of the rights of the parties.
14 And nobody's ever taken an inconsistent position.

15 And then, Your Honor, the remainder of the issues are
16 really more on the equal protection rights themselves. I'm
17 going to defer to Mr. Harris and he's going to address those
18 briefly for Your Court (sic), and then we'll hand it off to the
19 taxing authorities for their rebuttal. Thank you, Your Honor.

20 MR. HARRIS: May it please the Court. My name is
21 Scott Harris. I'm with the law firm of McLane, Graf, Raulerson
22 & Middleton in Manchester, New Hampshire, and I have been
23 invited here to discuss with you the equal protection aspect of
24 the debtors' contentions in this matter. The reason being, is
25 that I have had the pleasure of litigating this exact issue for

1 the past fifteen years, first on behalf of Verizon, and now on
2 behalf of FairPoint.

3 What I'd like to do, Your Honor, is first just briefly
4 underscore the issue that counsel has raised about the
5 difficulty of having these matters heard in a timely fashion up
6 in our state court in New Hampshire. I'd like to give you a
7 little bit of background about the statutory framework and why
8 the --

9 THE COURT: Did you handle the Rochester case?

10 MR. HARRIS: I did, Your Honor.

11 THE COURT: How long did that take?

12 MR. HARRIS: Well, we went to the Supreme Court three
13 times. The litigation started in 1996.

14 THE COURT: Okay. Enough.

15 MR. HARRIS: It was tried twice and it took years for
16 each one of those rehearings.

17 But especially in this day and age, Your Honor, it's
18 difficult to get civil matters heard in New Hampshire, because
19 our courts are severely underfunded. Our supreme court has
20 curtailed jury trials. A third of the jury trials are gone.
21 Courts are closing several days during the week. The clerk's
22 offices have got to close in order to get paperwork out. They
23 are weeks and sometimes months behind in getting orders issued.
24 The National Council of Courts down in Williamsburg, Virginia
25 that studies these matters, says that we ought to have

1 somewhere between twenty-five and twenty-eight superior court
2 judges. We have sixteen. And that was at last count.

3 So the ability to get a matter heard, not only just
4 based on the history of this particular litigation, but going
5 forward, it will be years before we can dispose of these
6 issues. And so the idea of having the economy of this Court,
7 is one that's very attractive to the debtor in this matter.

8 Your Honor, in terms of the statutory scheme that
9 brings us here that tees up the issue of equal protection. In
10 New Hampshire, as I suppose in most states around the country,
11 the public ways are dedicated to use for public purpose. And
12 since the late 1800s, one of the public purposes was the use by
13 the public ways of the electric, gas and other utility-like
14 companies.

15 Now, fast forward to the 1990s and what you would have
16 confronted in 1990 was the taxation of the personal property of
17 all of the entities in the public ways by the state of New
18 Hampshire. It was an ad valorem personal property tax. But in
19 1991, what the legislature said was, we're not going to tax the
20 personal property of the telephone company anymore, because to
21 tax the land-line business is unequal and unfair and bad public
22 policy, because right now we have out-of-state wireless
23 companies coming in and they're not paying a facilities-based
24 tax, because they're not based in our state.

25 And so what the legislature said was, we're going to

1 exempt the telephone company from paying this facilities tax,
2 the tax on the poles, the wires, the conduit, things like that,
3 for so long as there's a communications excise tax that's paid
4 equally by all telecommunications providers. So what happened
5 then, Your Honor, is that the local municipalities decided that
6 this was a revenue source that they could now tap, because now
7 that the state was going to be imposing the communications
8 excise tax on the consumers, there was no longer an equivalent
9 tax on the facilities imposed against the telephone companies.

10 So the first effort of the municipalities was to say
11 those poles, wires and conduit, they're fixtures to the real
12 estate, so you owe us a real estate tax. And our Supreme
13 Court, in a case that's not even mentioned in our pleadings --
14 it was the Franklin case -- said, poles and wires are not
15 fixtures. They aren't taxed as real estate. So what the
16 municipalities then did, Rochester in particular, is they
17 looked to a section of the statute, 72:23.

18 Now, 72:23 is an exemption statute. It exempts from
19 taxation all governmentally-owned property. So that, for
20 example, if in Manchester there is a -- or in Franconia there
21 is a ski resort that's leased out by the town, that underlying
22 property would be exempt because it's governmentally-owned.

23 What the legislature said was if the governmentally-
24 owned property is used or occupied by an entity other than the
25 government, that entity has got to pay the tax. And that makes

1 good sense, and it works well, if you have, for example, a
2 concession stand that's operating on governmental property.
3 Because you can go to the private market and you can say what
4 would a concession stand like this be worth as real estate.
5 Because it's a real estate tax that would be imposed. And what
6 72:23 says is when you lease out the property, when you let
7 others use governmental property you've got to impose the tax
8 that would otherwise be due.

9 So in the case of a taco stand or a stand in the
10 forest serving the ski slopes, you can figure out what that tax
11 would be. What the Rochester did, though, said the telephone
12 company, and only the telephone company, is using and occupying
13 the public ways and so ought to pay a tax on that.

14 So we now have been at it for fifteen years, and we'll
15 be at it probably for another fifteen years trying to figure
16 out what is it that that real estate is worth, the real estate
17 that's used and occupied, because we only use it to the extent
18 it's a public use. But, nonetheless, that's the Rubicon that
19 we face.

20 But what happened in the latter part of this
21 litigation is that we said to the courts and the courts agreed
22 with us, and, frankly, we thought that this issue was over with
23 with the Supreme Court's decision in 2008, we said if you're
24 going to impose a real estate tax against the telephone company
25 for its use and occupation of the public ways you've got to do

1 the same thing for all of those that make a similar, if not
2 identical, use and occupation of that real estate, of that
3 ground in the public ways. Those include the electric company,
4 the gas company and the cable television company.

5 In fact, the cable television company makes the exact
6 same use as we do, just at a different level, because they
7 attach to the poles that the electric and telephone company
8 puts in the grounds, they use our conduit. They pay a fee for
9 that, but the fee is limited to the cost to actually put the
10 pole in the ground or the conduit in the ground or the pole up
11 in the air. There's no pass-through tax.

12 And there's a very extensive analysis at Exhibit H to
13 tab A where our Superior Court addressed that very issue.
14 Because that's one of the first things that the towns started
15 to say when they tried to bob and weave around the Supreme
16 Court's ruling. The Supreme Court's ruling was if you're going
17 to impose a real estate tax against the telephone company you
18 have got to impose that exact same tax against the electric and
19 gas company.

20 And the argument that the municipality was raising at
21 the time was they said well, we pay a facilities tax going back
22 to the 1990s. The same tax that we were exempt from they said
23 we pay that. And so we shouldn't have to pay the tax on the
24 ground. And the Court said paying a facilities tax, paying a
25 tax based on personal property is not paying a real estate tax.

1 So the Supreme Court of New Hampshire, which is
2 controlling and binding on this issue, has said if you don't
3 impose the real estate tax equally you don't impose it at all.
4 And the Rochester at the time said well, that's not fair; what
5 you should do is you should make the others pay more.

6 And if you look at the New Hampshire Supreme Court
7 decision citing Allegheny Pittsburgh, the U.S. Supreme Court
8 case that addressed similar circumstances, what the courts have
9 said is that's not how it's going to work. You're not going to
10 remit the taxpayer to having to go and fight to have the other
11 guy's tax raised. If a municipality, if the governmental
12 taxation authority is not going to impose the tax fairly, it's
13 not going to impose it at all.

14 So now most of the towns that are here today, Your
15 Honor, would say well, the only one we're not taxing is the
16 cable television company, and we have good reasons for that.
17 We think that they're really a good public player, they sponsor
18 our ball teams, they pay us the franchise fees, et cetera, et
19 cetera.

20 That doesn't cut it, Your Honor. Because the rational
21 distinction that they would have to prove is that there is some
22 different use that they're making of the public ways of the
23 real estate than what the telephone company is.

24 If their argument were to prevail you can say in the
25 City of New York there's a real estate tax that's imposed, but,

1 you know, this restaurant here, they sponsor ball teams, they
2 pay a heck of a lot of rooms and meals tax, we don't think that
3 they should have to be burdened by this real estate tax.
4 That's exactly what the towns are saying vis-a-vis cable
5 television.

6 We thought that the New Hampshire Supreme Court had
7 put an end to that. To the extent that they raise that
8 argument, we then had that very same argument raised by Conway.
9 You'll see, again, at Exhibit H to tab A that the Superior
10 Court made short work of that. And said that's not what the --
11 that's not what the Supreme Court had said. It's not like
12 being, you know, a little bit less in violation of the equal
13 protection. If you're going to impose this tax you're going to
14 do it on everybody.

15 So we think that the issue has been decided by New
16 Hampshire Supreme Court. We think the argument that the
17 municipalities are now raising doesn't have any logical or
18 legal supportability to it. And so we -- we're asking the
19 Court to -- in this process to determine their liability to be
20 zero.

21 With that, unless the Court has any questions, I'll --
22 THE COURT: No, thank you.

23 MR. GROGRAN: Your Honor, I think we'll turn it over
24 to the towns if they have any arguments.

25 MR. SKLAR: Good morning, Your Honor. Daniel Sklar,

1 with the law firm of Nixon Peabody, Manchester, New Hampshire
2 office. And I'm here this morning with my co-counsel, Mr.
3 Ciandella. We are here on behalf of our version of the Five
4 Towns: Hinsdale, Salem, Seabrook, Raymond and Newmarket.

5 As debtor did, we would like to also proceed in a
6 somewhat bifurcated, but efficient, manner, to avoid
7 repetition.

8 I'd like to be able to address the 502(c) technical
9 bankruptcy questions or issues. Mr. Ciandella would then, as
10 Mr. Harris did, discuss the Rockingham (sic) precedent. And,
11 lastly, Mr. Kennedy, who is here on behalf of Concord, would
12 just like to cover those issues which are unique to the City of
13 Concord.

14 Just to add a little bit to the factual background,
15 Your Honor.

16 The Town of Hinsdale has filed a proof of claim for
17 taxes assessed for the four years in question, '05 through '09,
18 in the amount of 118,000 dollars. There are five users of the
19 right-of-way they tax for them. They do not tax Comcast as Mr.
20 Ciandella will discuss.

21 Salem, New Hampshire has a claim of 230,626 dollars.
22 They tax six of the seven users of the right-of-way. The
23 exception, again, being Comcast.

24 Raymond, New Hampshire, Your Honor, has filed a proof
25 for 128,390 dollars. They also tax everybody but Comcast.

1 Seabrook, New Hampshire has a claim for 55,000
2 dollars. Also taxing everybody but Comcast.

3 And, lastly, is Newmarket, with a claim of 13,600.
4 They also tax all but Comcast.

5 One point I -- I don't know if I necessarily dispute,
6 but I think there's a point of clarification. The litigation
7 is not pending in eight different courts, they are pending in
8 three different courts. Most of them are in Rockingham County.
9 There are a couple in Merrimack County and one in Cheshire
10 County. But for the most part the cases are all pending and
11 have been consolidated in Rockingham County.

12 In addition, as you've heard already, what we're
13 dealing with here are issues of New Hampshire --

14 THE COURT: I would take it Comcast has an interest in
15 this litigation?

16 MR. SKLAR: They should. They definitely should, but
17 they haven't picked up on it yet.

18 The basis for the debtors' request for estimation of
19 the claims, Your Honor, arises under Section 9.22 of the plan.
20 In that provision they are required to escrow or to reserve
21 funds against disputed claims, which is what we maintain these
22 are; disputed claims.

23 And the issue is, under that section they have to
24 reserve either the amount of the claim, the amount that the
25 claim is estimated by -- the lesser of, or the amount that this

1 claim is estimated by, or the amount that we might agreed to,
2 which is a point I'd like to come back to in a little bit.

3 But the issue then is whether or not escrowing the
4 aggregate amount of some 540,000 dollars is burdensome to the
5 estate, or unreasonable to the estate, on a worst case basis,
6 and whether or not allowing this -- these matters to proceed in
7 the Superior Court in Rockingham, especially where we have
8 actually been given a trial date in November, next month, if we
9 wish to avail ourselves of it, causes undue delay to the
10 estate.

11 Your Honor, 502(c) has a two-part standard for
12 estimation for purposes of allowance. First, it has to be a
13 contingent or unliquidated claim. And, secondly, the
14 liquidation of that claim by other means has to result in an
15 undue burden, delay to the estate.

16 As much as they keep saying it, I don't think anybody
17 really thinks that a tax claim, a bill, assessment lawfully
18 issued in accordance with the statute is a contingent or
19 unliquidated claim.

20 As they mention in their reply brief, the debtor
21 states the towns don't tax all the users. Accordingly,
22 FairPoint disputed the tax assessment for the prior years. And
23 as I noted under Section 522 of the plan dealing with disputed
24 claims this all is brought about by the necessity to calculate
25 what they need to reserve under that section.

1 The code does not define contingent, nor does it
2 define liquidated or unliquidated. But the debtor would have
3 you believe that somehow until the Supreme -- until we tax
4 Comcast these claims are contingent. But then at Section 87 of
5 their omnibus reply they correctly note that we cannot go back
6 and assess Comcast for 2005 and 2006. That's not legally
7 permissible under New Hampshire taxing scheme. You have to
8 tax -- the tax assessor for each municipality has to tax,
9 effective as of April 1st of each year, and if that's not done
10 there's no going back and fixing it later.

11 So there's no way that it could be contingent -- these
12 claims could be contingent based on our taxing Comcast
13 retroactively for those years, because it's not legally
14 permissible, and they acknowledge that fact.

15 And, again, that's contingency. The other prong is
16 liquidation of it. The claim has been -- is a liquidated
17 claim. I mean, an equal protection argument is not going to
18 determine the amount of the claim. That's a yes or no. It's a
19 total claim or zero, if the tax assessor violated the equal
20 protection clause. So to say that this claim is unliquidated
21 also is, I think, a bit of a stretch.

22 And, again, here what's rather unique is the policy
23 behind all of this. In addition to rapid admin -- or efficient
24 administration of the estate, is to give the Court the
25 information it needs to confirm a plan and determine

1 feasibility, in particular.

2 This has already been done. That part of this case
3 and the confir -- the bifurcated confirmation process you have
4 already confirmed the plan as far as feasibility is concerned.
5 It's now just waiting on the Vermont Public Service Board to
6 satisfy that last contingency to phase II of the confirmation
7 process.

8 So it's not even -- I mean, you've already had to have
9 taken that into consideration at the time they -- the first
10 confirmation order was entered.

11 But it is clear, Your Honor, that these are disputed
12 claims. They say they're disputed claims, it's for disputed
13 reserve, and I -- I take some guidance from the Adelpia case,
14 where Judge Gerber basically said, or exactly said, "I cannot
15 agree that any time one disputes an otherwise liquidated claim,
16 or asserts a counterclaim, that makes that claim unliquidated.
17 When it is time to determine the allowance of the DIP claim
18 we'll have to do it the normal way, which is by litigation."
19 That's where we are.

20 The question is do we litigate it here or are we going
21 to litigate it somewhere else? But I don't think it's
22 appropriate at this time, for various reasons, to deal with it
23 on the basis of claims estimation. And I don't think that's
24 what it was meant to be.

25 And the other aspect, they keep saying -- Mr.

1 Ciandella will get to it -- but they keep saying the Supreme
2 Court has said that you have to tax everybody. And, in fact,
3 that's not what they said. They said you don't have to tax
4 everybody as long as you have -- you can satisfy the rational
5 basis test. And we think we can satisfy it, and that's the nub
6 of the dispute.

7 Secondarily, or subsequently, under 502(c) is the
8 issue of undue delay. The fact of the matter is, Your Honor,
9 while I couldn't find any case law in point, I think you'd have
10 to agree that the debtor has some minimal duty to try to
11 mitigate against undue delay. We have been afforded
12 opportunity in the Rockingham County Superior Court to get on
13 the docket relatively soon. We are agreeable to let Seabrook
14 be the test case, and be bound by the outcome of that case. We
15 are willing to do a lot of things to try to expedite this
16 process.

17 The debtors' response appears to be gee, I don't know
18 how long it's going to take you to get relief from the
19 automatic stay. And that should take two seconds. We should
20 do it by agreement, and it should be over with. It shouldn't
21 have -- I mean, it's kind of a straw man to say that we have to
22 come before this -- should have to come. I mean, yes,
23 technically, that's what would have to be done. But in order
24 to avoid an undue delay I don't think it's -- there's anything
25 policywise that would mitigate against putting some duty on the

1 debtor to try to avoid having to go to estimation. That should
2 be something -- a tool of last resort under the circumstances.
3 And it's just not happened here.

4 We need to get this resolved, and we need to get it
5 resolved quickly. But you're dealing with New Hampshire
6 constitutional issues, and New Hampshire tax law issues, and
7 notions of New Hampshire property law, you know, and taxing a
8 leasehold interest on exempt public property. This is not
9 simple stuff to begin with.

10 But the state has a very compelling interest in
11 controlling and creating some uniformity here and dealing with
12 these issues. And I think that needs to be taken into
13 consideration.

14 On the point of abstention, Your Honor, the rule's a
15 little different in the First Circuit. I understand what the
16 rule is in this circuit. And I understand you get the check
17 every month, you should exercise the jurisdiction that's
18 conferred on you, that's the deal.

19 And as the Court said in *Metromedia*, the rule -- "A
20 federal court should exercise the jurisdiction conferred upon
21 it absent a compelling reason not to do so." I get it.
22 That's -- and I don't disagree with it, actually.

23 But in *Metromedia* Judge Hardin did abstain on a 505(a)
24 basis, which is similar to what's before the Court this
25 morning; and did it on the basis of the Supreme Court's opinion

1 in Arkansas Corporation. That basically said that there's a
2 national policy of federal non-interference with the taxing
3 powers of the states. That's squarely what we're dealing with
4 here. And I think it's important for the Court to take into
5 consideration that federal policy that in these situations,
6 again, only as a matter of last resort, should federal courts
7 get involved in the taxing power of the states.

8 And I think that -- you know, there's a twelve-factor
9 test, the seven-factor test, when you cut through all of
10 that -- those issues, I think this is what it comes down to,
11 especially in the Second Circuit. The same with non-statutory
12 abstention, which we also raised.

13 But, lastly, for my section, Your Honor, I also want
14 to just point out that even though we raised it, and they filed
15 a fifty-page reply brief and so forth, to their credit, in a
16 2.7 billion dollar case, they have not alleged, asserted or
17 claimed that escrowing 500,000 dollars, or reserving 500,000
18 dollars is going to put any type of burden-- unreasonable
19 burden on the debtor.

20 And at the end of the day, I think, when we -- the
21 Court can resolve the issue on that basis, I think that's where
22 the balancing of the equities should come out.

23 We will get to it. You know, plans are confirmed all
24 the time where things happen in the future based on the outcome
25 of litigation post-confirmation. Again, we are prepared -- the

1 towns, like the court system, are seriously underfunded. This
2 is big money to them, it's very important to them, but we can't
3 spend that much and more in legal fees fighting about it.
4 We've got to be efficient. We've got to get it done
5 expeditiously. And I think, you know, we're committed to doing
6 that.

7 And relatively speaking, the burden on FairPoint for
8 reserving that type of money is not -- at least not significant
9 enough to warrant a sentence in any of their pleadings. And I
10 think that the Court can take that into consideration as well.

11 THE COURT: Thank you.

12 MR. SKLAR: Thank you, Your Honor.

13 MR. CIANDELLA: Good morning, Your Honor. I'm Rob
14 Ciandella of Donahue, Tucker & Ciandella in Exeter and
15 Portsmouth, New Hampshire.

16 Your Honor, the Rochester case does not dictate the
17 result of the equal protection claims that are before this
18 Court. Rochester case is not some ball that you roll onto a
19 field and the game is over, it's simply not so.

20 The Rochester holding is not that as a precondition
21 to taxing any user of the right-of-way, you have to tax all
22 users of the right-of-way.

23 In Rochester the Supreme Court said "Municipalities
24 can selectively tax users of the right-of-way as long there is
25 a rational basis for that selection." There are two key

1 elements of Rochester, one of which I've touched on, that
2 demonstrate why Rochester does not dictate the result here.

3 The first is that in Rochester, as Mr. Harris said,
4 Verizon was the only user of the right-of-way that was taxed,
5 they were singled out. So it's as if all the lawyers before
6 you, Your Honor, Rochester picked Mr. Sklar and said only you
7 pay the tax. The cases that are here are exactly the opposite,
8 the inverse. All of the users, all of these lawyers who are
9 going to pay the tax except one; Comcast, the cable company.
10 All five towns, it's just Comcast.

11 The second key element is the element I just
12 described, that Rochester, why it doesn't dictate is that in
13 Rochester what the Supreme Court said even in that extreme
14 circumstance where only one user was singled out that could
15 meet the equal protection clause of the New Hampshire
16 constitution if it met the rational basis test. And the
17 language of the Court is, and it's on page 630 of the New
18 Hampshire opinion report the words of the New Hampshire Supreme
19 Court are these. And, again, this is in the context where they
20 selected a single user and ignored the others.

21 The Supreme Court said, "There is no equal protection
22 violation, however, if the city's selective taxation is
23 reasonably related to a legitimate state interest." And that's
24 the rational basis test in New Hampshire as in other
25 jurisdictions, as to the lowest constitutional standard.

1 And what the Supreme Court went on to say is that
2 FairPoint -- in that case it was Verizon. But what FairPoint
3 would have to prove is that the selection -- and, again, this
4 is in the context of a single -- a singling-out of one user
5 that the -- Verizon had to provide that the selection was
6 arbitrary or without some reasonable justification, or our
7 Supreme Court invoked the federal standard; it said "That
8 Verizon had to negative every conceivable basis which might
9 support the selection, whether or not the basis has a
10 foundation in the record."

11 So Rochester, the facts are completely opposite,
12 inverse, of the facts here. One user singled out in Rochester,
13 here all users are taxed except one. And our court has said in
14 the more draconian circumstance is there a rational basis?

15 In Rochester what the Court said, and it's, again,
16 it's a short opinion, the Court said in that case the city did
17 not offer any rational basis for why it singled out one user of
18 the right-of-way and ignored the others for purposes of
19 taxation. There's language and the Court says, "The city
20 offers no rational basis."

21 Here, again, it's the opposite. The towns have put
22 in -- the five towns have put into the record facts which
23 answer the question why. What is the rational basis?

24 And I'd like to use Seabrook as an example. This is
25 one of the five towns, Your Honor. Seabrook is a town of about

1 10,000 people right at the Massachusetts border. In Seabrook
2 there is -- Your Honor probably knows, there's a 1200 megawatt
3 nuclear power facility. It's the last one constructed in the
4 U.S., came online about thirty years ago. And that plant in
5 this small town imposes significant emergency planning
6 responsibilities on the town.

7 Now, the cable operator, Comcast, provides two very
8 important emergency management functions for the town. One, it
9 built a separate network for the town. A fiber-rich network
10 that connects all the town buildings, the satellite that
11 allows -- it's really the backbone of the town's emergency
12 management system.

13 Two, within the franchise agreement between the town
14 and the cable operator there's a provision that specifically
15 allows the town to nominate two town officials who can override
16 the programming on the cable system. And the language of the
17 agreement is, "That those officials are given control of all
18 channels for a limited period of time for the purpose of
19 transmitting instruction to viewers."

20 So this is a key element of the town's emergency
21 management plan. And so whereas Rochester offered no reason
22 for singling out Verizon in that case, in Seabrook's case,
23 they're taxing all users, all the lawyers here, except for one,
24 to Comcast, and it's a rational basis test. And I've just
25 given you one example of why we think Seabrook will meet that

1 rational basis test.

2 The cable operator in Seabrook does other things.
3 They provide franchise fees, they provide a public educational
4 and governmental access programming. They provide Internet to
5 the libraries and schools. But they provide this core
6 emergency management function, which is central to Seabrook's
7 government -- town government responsibility.

8 So Seabrook has a legitimate government interest, a
9 rational basis for selecting -- not selecting, singling out
10 Verizon or FairPoint but for deciding not to tax Comcast for
11 using the right-of-way.

12 So I guess our view, Your Honor, is that Rochester is
13 not some bell that ends all of the contest on this question.
14 All five towns taxed all users of the right-of-way and since
15 the New Hampshire Supreme Court said even in the dramatic
16 circumstance where a single user is chosen -- picked out among
17 five or six users of the right-of-way, 'we're only going to tax
18 you,' even in that circumstance, the Supreme Court said that's
19 not an automatic violation of the equal protection clause.
20 The question is, is there a rational basis for that selection.
21 In our circumstance, we've taxed everybody except Comcast and
22 we have a rational basis for that decision.

23 THE COURT: Thank you.

24 MR. KENNEDY: Good morning, Your Honor. My name is
25 Jim Kennedy; I'm counsel for the City of Concord which is New

1 Hampshire's great capital city. I brought with me today Kathy
2 Temchack, who is the city's assessor, and who actually assessed
3 the use and occupancy of FairPoint's -- and their predecessor,
4 Verizon's, use and occupancy of the right-of-way.

5 It looks as though we skipped over Claremont, that was
6 addressed first, but I expect that we'll get back to them at
7 the end here. I expect that they'll have something to say
8 about this 422,000 dollar claim that was estimated at zero
9 shortly.

10 But our claim, Your Honor, has -- raises five points.
11 Our objection to their motion estimate raises five points and
12 Mr. Sklar and Mr. Ciandella have certainly spoken to the bulk
13 of those points. Certainly under 502(c), this is not a
14 contingent claim. I mean, this isn't like an oil spill out in
15 the gulf waiting to see if the oil's going to hit Pensacola.
16 And this isn't an old asbestos type claim finding out if
17 there's going to be a future injury. This is a tax that was
18 actually assessed. There's no contingency whatsoever about
19 this claim.

20 It's also liquidated. We know exactly what Kathy
21 Temchack and her predecessor taxed FairPoint and/or Verizon for
22 its use and occupancy of the right-of-way. And Mr. Sklar aptly
23 pointed to the Adelphia case citing that we don't estimate
24 liquidated claims.

25 Also, with respect to -- looking at 502(c), with

1 respect to undue delay. There certainly is no undue delay with
2 the City of Concord. Even when the -- FairPoint filed this
3 motion to estimate, which was most shocking to the City of
4 Concord, quite frankly, given the stage of litigation in
5 Merrimack County Superior Court when they filed this in June.
6 Your Honor, this past summer, we were on schedule for summary
7 judgment motions to be filed in Merrimack County Superior Court
8 and on trial for a final hearing on the merits next month. And
9 so we've agreed, during the pendency of this litigation, to
10 continue and continue and the Court has accommodated our
11 request to continue but certainly there's no undue delay here.
12 The court in Merrimack County is ready, willing and able to
13 hear our case upon our notice. And we've filed those motions
14 with the court, respectively.

15 Also, Your Honor, this is not a jury trial case.
16 While Mr. Harris is correct that there's been some delay with
17 respect to jury trials, there's been virtually no delay with
18 respect -- at least in Merrimack County, I've experienced no
19 delay with respect to bench law -- or cases presented to the
20 court, which this is set for. And so undue delay is not there.

21 Also, with respect to the reserve. This city filed
22 205 some odd thousand dollars worth of claims in FairPoint; I
23 understand this to be a 2.7 billion dollar reorganization. And
24 so it's a most de minimis amount of money that we're talking
25 about with respect to the City of Concord. And while it's de

1 minimis in the context, I must say to FairPoint -- have a 2.7
2 billion dollar reorganization, it's a lot of money to the
3 citizens of Concord, New Hampshire, who rely on taxation for
4 the services that the city provides. That's real money to the
5 budget of the City of Concord.

6 With respect to abstention, I'll just merely reiterate
7 and certainly adopt the points, again, that Mr. Sklar related.
8 This is a pending action in Merrimack County Superior Court.
9 We've had dates on the docket, we've continued dates on the
10 docket; we have not agreed that the automatic stay applies.
11 The Court ruled that that issue is moot and we are ready to
12 proceed.

13 And certainly it's an issue of constitutional state
14 law, Your Honor, and I'll get to those points in just a minute
15 with respect to Rochester. I've got a few points that I'd like
16 to make there too in addition to what my brother New Hampshire
17 lawyers have made as well. But certainly it's an import of New
18 Hampshire state law and you asked the question, Your Honor, of
19 Mr. Sklar, what does Comcast have to think about this? And
20 certainly Comcast has a lot to think about this. They're the
21 one entity that certainly the City of Concord didn't tax; none
22 of the entities here taxed. And, interestingly, Claremont
23 taxes Comcast's use and occupancy of the right way but
24 certainly I question whether the doctrine of res judicata would
25 apply in the context of an order coming from this Court and the

1 application of that to Comcast and if that's going to settle
2 this very unsettled law up in the state of New Hampshire.

3 This is not a case, Your Honor -- and I'll get to in a
4 minute, and certainly Mr. Ciandella raised it quite clearly,
5 that Rochester is not a controlling factor here. At all. The
6 facts are completely opposite and opposed, at least with
7 respect to the intricate facts of taxation as appeared in
8 Rochester.

9 And one other point I'd like to raise, Your Honor,
10 with respect to the Rochester case and the fifteen years that
11 Mr. Harris spent litigating that. And by the way, he did a
12 wonderful job giving the historical context of the case and we
13 wholeheartedly agree with the history that he provided.
14 However, the issue that's before the Court, the fundamental
15 issue of equal protection, wasn't brought to the Supreme Court
16 and the Supreme Court actually issued a decision in 2007. So
17 it actually rendered that decision very quickly. As the Conway
18 court -- in North Conway, which is not a precedential decision,
19 expedited a decision in that case most rapidly. And I would
20 expect only the same at a Merrimack County Superior Court and
21 Judge McNamara, who sits there, I would expect would be very
22 judicious and expedient (ph.) in rendering a decision for the
23 City of Concord in this case as well.

24 But certainly getting to the merits. And that's the
25 equal protection argument, the state constitutional law

1 arguments that you've heard about. And this is not Rochester,
2 okay? In Rochester the tax assessor singled out one person.
3 And you've heard this over and over again; I don't want to
4 reiterate it. But it's fundamentally Your Honor, if you own a
5 home here in New York City and the assessor says 'I'm only
6 taxing you and I'm not going to tax the ten million or however
7 many other million have residence in the city, I'm only taxing
8 you', then you have an equal protection claim. You're going to
9 go to the court and say 'it's unfair, unequal treatment; I
10 don't want to pay taxes'. And the court's going to say, as
11 they did in Rochester, 'okay, you don't have to pay taxes'.

12 But what's going on here, Your Honor, is we're taxing
13 everyone in the right-of-way but for a cable provider. And
14 certainly I adopt what Mr. Ciandella has said with respect to
15 the rational basis not to tax that cable provider. But
16 however, even if a court were to find that we are required to
17 tax the cable provider, the remedy is not to give FairPoint,
18 and all the other public utilities, a free ride. You don't
19 give FairPoint a free ride of paying no tax because we failed
20 to tax one person.

21 Going back to the example of your home in the city,
22 Your Honor, if the city taxes you as well as everyone but fails
23 to tax your neighbor, so they fail to tax one other person
24 similarly situated to you in the entire city, they fail to tax
25 you, then what does that mean? It's not going to mean that --

1 or they fail to tax your neighbor. It doesn't mean that you
2 don't have to pay taxes and that everyone else in the city
3 doesn't have to pay taxes; it's an error of judgment. And you
4 get that precedent from the New Hampshire Supreme Court, from
5 the United States Supreme Court; error of judgment doesn't
6 result in giving everyone a free ride not to pay taxes.

7 And certainly the result -- going to the remedy here,
8 even if we're required to judge Comcast, the New Hampshire
9 Supreme Court said that the remedy is prospective. Okay? You
10 bring everyone up -- where the error was you bring that person
11 up to be taxed.

12 So if Comcast is required to be taxed, and we're
13 taxing everyone else in the right-of-way, then you tax Comcast.
14 But you don't give all the other public utilities in the city
15 or the state a free ride for not -- taxing there. So that's
16 the remedy there, Your Honor. It's very important here. So
17 that goes to the estimation at zero -- even if there is an
18 equal protection argument, they're not going to not have to pay
19 taxes. This is not Rochester.

20 Rochester singled out one person, one entity, and
21 didn't tax any other similarly situated entities. Here we're
22 taxing everyone but, perhaps, maybe there was an error of
23 judgment, at the worst, or we have a rational basis at the
24 other end. So either way, rational basis or error of judgment
25 does not result in no taxation for FairPoint. They will still

1 have to pay taxes. And, quite frankly, under the New Hampshire
2 Constitution, cited in my memorandum, Your Honor, you'll see
3 that it violates the New Hampshire Constitution not to tax
4 FairPoint. Because not taxing FairPoint means that you disrupt
5 the disproportionality of the taxation within the
6 municipality -- within the city. And disrupting the
7 disproportionality is unconstitutional. It's basically saying
8 'okay, citizens of Concord, we're not going to require
9 FairPoint to pay 200 and some odd thousands -- dollars this
10 year in taxes; we're going to disburse that all among you'. So
11 they get a free ride because there was an error of judgment or
12 there wasn't a rational basis. That's not the way it works.
13 The taxation remains with FairPoint; they're going to be --
14 they are absolutely liable for that taxation, notwithstanding a
15 rational basis or error of judgment.

16 With respect to the judicial estoppel agreement, Your
17 Honor, we've raised that showing the import and the
18 significance of this case to the City of Concord. As I
19 mentioned, 205,000 dollars is a lot of money for the city and
20 we were expeditiously litigating this case and expecting and
21 prepared for summary judgment in July of this summer. It was
22 moved forward; we had filed motions to continue in the Superior
23 Court. Again, the city was objecting that the automatic stay
24 applies because this was not an action against the debtors that
25 is required under 362. This was an action brought by debtor

1 against the City of Concord. And certainly under New Hampshire
2 law, it's the debtor that has the burden of proof in tax cases.

3 And so under the doctrine of judicial estoppel, we had
4 filed these motions to continue. The Court ordered that the
5 automatic stay was moot. We also saw, this past summer, an
6 extension for the 1452 filing, on behalf of FairPoint, to be
7 able to extend that period and we were assuming that it was
8 going to be a 1452 proceeding to remove the -- certainly remove
9 the state court proceeding to the New Hampshire Federal Court
10 where we would have an opportunity to object and then
11 potentially down here to this court.

12 This estimation certainly also goes to due process. I
13 mean, estimating these claims at zero would certainly violate
14 the city's due process right to adjudicate the meritorious
15 issue presented in this case. And we believe that we have a
16 solid case, wholly different -- absolutely different from the
17 City of Rochester. The facts are different, the remedy's
18 different and ultimately it doesn't mean that FairPoint gets a
19 free ride on taxation. They will have to pay taxes.

20 THE COURT: Thank you.

21 MR. KRAVET: Good morning, Your Honor. Donald Kravet,
22 with Kravet & Vogel, LLP, counsel for the City of Claremont.

23 Your Honor, Claremont is differently situated than the
24 five towns and Concord for this reason: Claremont taxes
25 everyone. I mean everyone. They tax the two utilities and

1 they tax the two cable providers, including Comcast. So even
2 under the debtor's reading of the Rochester case, we pass
3 muster. Everyone is treated equally; everyone is taxed.

4 In response to that argument, Your Honor, what the
5 debtor says is 'well, but you don't tax the electric companies
6 for right-of-way; you just tax them under a different
7 provision'. But that actually is wrong. That's factually
8 inaccurate. The City of Claremont taxes utilities under a
9 provision with respect to infrastructure but separate and apart
10 taxes the utilities under the provision at issue here with
11 respect to right-of-way.

12 Now, Mr. Grogan earlier made reference to an exhibit
13 that is in the docket and before Your Honor and he said 'if you
14 take a look at it, you'll see that there's a land value
15 assessment and a building value assessment but there's no use
16 value assessment', meaning they don't tax for use. But if you
17 actually turn to the very next page of the exhibit, Your Honor,
18 what you'll see is a supplemental warrant. And that
19 supplemental warrant, that has a city right-of-way tax and a
20 very substantial number there for the tax. So if you look at
21 one document you see zero, but if you turn the very next page
22 you'll see that, in fact, we do tax for right-of-way for use
23 tax.

24 The other issue that was raised this morning, Your
25 Honor, by the debtor, was that this is an application by

1 Claremont for -- to reconsider. And that's because Claremont
2 did not receive a copy of the debtor's motion seeking to
3 estimate its claim.

4 Now, Mr. Grogan said that the only thing that
5 Claremont has done in support of its motion to reconsider is to
6 deny receipt of the debtor's motion. And if that were
7 accurate, Your Honor, I would agree with Mr. Grogan that the
8 motion to reconsider would not be valid. But, in fact, we have
9 done more than that and Mr. Grogan did not mention that also in
10 the record and before Your Honor is an affidavit submitted by
11 Pamela Dyer (ph.) and it is Ms. Dyer's job to receive and sort
12 and distribute the mail. And what Ms. Dyer testifies to is
13 precisely the exact methodology that she uses in receiving the
14 mail and in sorting the mail and in distributing the mail. And
15 the case law tells us that testimony denying receipt in
16 combination with evidence of the standardized procedures for
17 processing mail will rebut the presumption of receipt upon
18 mailing.

19 The presumption of receipt upon mailing is just that,
20 it's a presumption, it is rebuttable, and under the applicable
21 case law it is our submission, Your Honor, that we have
22 successfully rebutted that presumption. With respect to the
23 issues of abstention and the issues of delay and the issues of
24 estimation, I will rely on the arguments that were made by
25 prior counsel.

1 Thank you.

2 THE COURT: Thank you.

3 MR. GROGAN: Your Honor, James Grogan, again, for
4 FairPoint.

5 Your Honor, I'll start with arguments made by Mr.
6 Sklar for the five towns. Your Honor, on the estimation point,
7 nothing says that 502(c) is a tool of last resort. 502 governs
8 claims, generally. 502(a) says that a claim is deemed allowed
9 unless a party-in-interest, like FairPoint, objects. 502(b)
10 provides grounds for objections. 502(c) says that if a claim
11 does not fall within (b), then you can ask for estimation. And
12 the claim is objectionable under (b) if it's not contingent or
13 you can object under (b) on grounds other than the fact that
14 it's contingent. And then (c) covers situations where the
15 claim is contingent.

16 Here, the Supreme Court has laid out a clear
17 framework, as I said before, for how this tax is supposed to be
18 applied constitutionally in New Hampshire. It's no different
19 than if we had a contract which says that FairPoint owes X
20 dollars upon the fulfillment of the following three conditions:
21 notice of the bill, the stated amount and a due date. Here we
22 have, you know, some conditions: the tax has to be assessed
23 and it has to be assessed against each of the parties in the
24 right-of-way. There are five known parties using the right-of-
25 way; they don't tax all of them. So until they tax each of the

1 parties, the tax is not properly assessable.

2 Now, putting that aside, I think all of these
3 arguments about the process are really -- they're missing the
4 point. Each of these taxing authorities has gotten all the due
5 process that they're entitled to under bankruptcy law and Rule
6 9014. We served this objection on -- rather served this motion
7 on each of the towns. They had plenty of notice; we gave them
8 more than thirty days' notice of the initial hearing. They
9 responded all of their substantive arguments have been
10 presented to this Court; the parties have fully briefed the
11 issues. Basically what they're saying is that we need to
12 change the title of our initial submission. Instead of saying
13 "Motion to Estimate", we need to say "Motion to Disallow", re-
14 file it, come back in another thirty days and go through this
15 whole circus again. It seems like a complete waste of time.

16 Everybody has had all the due process that they're
17 entitled to with notice and an opportunity to be heard. We've
18 submitted probably more than a thousand pages of briefs and if
19 nothing else, the clerk could just consider this as our
20 objection to the claims.

21 Rule 9005 clearly says that anything of this nature is
22 nothing more than harmless error and, in fact, in In re Medium
23 (ph.), Judge Drain did exactly the same thing when somebody was
24 objecting as to whether or not it should be an adversary
25 proceeding and he just said 'well, okay, I'm going to apply

1 part 7 of the rules because we're not going to make the debtor
2 keep re-filing papers to suit everybody's desires on what the
3 title should be'.

4 Second, the towns argued that we just hadn't done this
5 enough in state court so we should go to Rockingham County
6 Court and then there could be this efficient process where we
7 get a final ruling and then everybody's going to agree to that.
8 Well, we should go to the county for Concord and everybody's
9 going to agree to whatever Concord does. Remember, we already
10 did this in Conway. So the county court for Conway already
11 considered the exact same issue that each of these towns has:
12 do they have to tax Comcast? And the court in Conway said yes.
13 The debtors don't owe anything because you don't tax Comcast.

14 So if all we need is one State Superior Court to go
15 ahead and rule on whether Rochester governs here, we have it.
16 Conway did it, it's in our briefs; we submitted a copy of the
17 decision. Each of the towns is right and it rules against them
18 so there's not a -- why do we need Rockingham or Concord to do
19 the same thing that Conway did?

20 Next, the towns argue that you're getting involved in
21 the taxing power of the states. It's not the case. Every
22 party comes to this court with some underlying state law of
23 right, whether it's contract or tax or something else that
24 arises under state law. We're not asking Your Honor to
25 determine what the New Hampshire Supreme Court would rule if it

1 had an opportunity to say 'does equal protection require them
2 to tax all the parties using the right-of-way'. We already
3 have the ruling. Your Honor just needs to apply settled state
4 law as determined by both Rochester and Conway. And the towns
5 are just arguing as to why none of these other decisions apply.
6 But the fact of the matter is they do apply; they're square on
7 point. This is the same tax in the same -- it's just different
8 towns that we would be arguing res judicata except for the fact
9 that it's different parties.

10 Next is in Concord they say that they only -- the
11 difference between them and Rochester is that they only tax --
12 in Rochester, the town was only taxing one party and in
13 Concord, they tax all but one. This is really just an argument
14 that they're not quite as discriminatory as Rochester was. But
15 that doesn't cure the constitutional defect identified by the
16 Supreme Court. The Supreme Court didn't say -- didn't make the
17 test 'well, if you tax some percentage of the parties in the
18 right-of-way, you get a free pass on the ones you don't tax'.
19 In fact, the statute, 72:23, if you read the statute, it says
20 that the tax shall apply to all parties in the right-of-way.

21 At one time I guess Concord had kind of backed off of
22 this. They made the argument that what "party" really means is
23 "utility" and Comcast isn't a utility. But these are just
24 silly arguments. They have to tax, under the statute, all
25 parties in the right-of-way.

1 Next Concord makes the argument that there is no
2 action again the debtor. That's ridiculous. They want --
3 these terms want hundreds of thousands of dollars from the
4 debtor. It is an action against the debtor and, in fact, today
5 there's a Supreme Court case -- U.S. Supreme Court, which is
6 binding here, Raleigh v. Illinois Department of Revenue, 530
7 U.S. 1522. It's a 2000 decision. Justice Souter said
8 "Consider the case where tax litigation involving a state and a
9 debtor taxpayer is pending when the taxpayer files for
10 bankruptcy. The automatic stay applies." That should conclude
11 the matter.

12 Now, Your Honor, there was also another reference by
13 Claremont to its rebuttable presumption of receipt. Your
14 Honor, this -- the key case here is STN Enterprises and what
15 the court said was you have to look at the procedures that the
16 claimant actually employed. And it needs to be procedures that
17 are like a business, such as a log of all the mail that comes
18 in on a daily basis and then you can actually go back and you
19 can check the record and see whether or not this particular
20 item of mail was actually received. And if it doesn't appear
21 in the log on any day within the range of receipt, then you
22 know that the package didn't arrive.

23 There's no log here; this is just their word against
24 ours. Our claims and noticing agent says they sent it to the
25 town and the town is saying 'we never got it'. There's nothing

1 else here; just their word against ours. That's not the kind
2 of thing that the case law says justifies a denial of the
3 presumption of receipt.

4 Your Honor, Claremont also raised the argument that
5 their taxation of the infrastructure satisfies 27:23. And on
6 that point, I'm going to hand the podium over to Mr. Harris and
7 he'll take Your Honor through the tax bills and explain exactly
8 what's going on.

9 MR. HARRIS: Just very briefly, Your Honor, I'm sure
10 you've heard quite a bit about this.

11 I do want to respond to Concord's notion that it would
12 be violative of the New Hampshire Constitution not to strike
13 this tax. Because that's exactly what the court did in
14 Rochester, it struck the tax and it was not concerned that the
15 disproportionality in the community was somehow going to be
16 affected. The reason being is this is in part a little bit
17 coercive to say to the municipalities 'if you're going to
18 impose a tax, you're going to do it equally' and the idea that
19 they can just single out, now, one that they're going to give a
20 tax break to doesn't achieve the ends of proportionate
21 taxation. Instead, it violates the systematic unequal taxation
22 that caused the New Hampshire Supreme Court and the U.S.
23 Supreme Court in the Allegheny Pittsburgh case to strike the
24 tax.

25 THE COURT: Did Verizon have to pay the tax in

1 Rochester?

2 MR. HARRIS: No, ultimately the Supreme Court in New
3 Hampshire struck all ten years that were then pending and
4 Rochester hasn't been seen since.

5 THE COURT: I understood that. Okay.

6 MR. HARRIS: Your Honor, in terms of this idea that
7 Claremont is taxing everyone, well, they are taxing everyone
8 but they're taxing the electric and gas companies under 72:8.
9 The reason -- the way you can tell that, Your Honor, whether it
10 be in the supplemental bills or the original bills, if you take
11 a look at the supplemental declaration of Colleen Penacho,
12 she's got Exhibits 15 through -- it looks like 20, and that
13 appears -- Exhibit D, Your Honor. Take a look at the third
14 page in, the first exhibit, it's Exhibit 15. And if you look
15 over at the right-hand side of it, the note "Appraisal
16 Building, Appraised X/F Value (BLDG), Appraisal OB Building".
17 Now, that's very significant for purposes of New Hampshire
18 taxation because every year when the tax is imposed the
19 assessors have got to submit a warrant, under oath, and one of
20 the things that they have to do is they have to distinguish
21 between the land value that they're taxing and the building
22 value that they're taxing.

23 We confronted this throughout the Rochester case and I
24 believe that it's -- that this exact issue is enshrined in the
25 Rochester decision. And what happened in Rochester was that

1 the city argued 'we are taxing the rights of way' and they
2 pointed to a tax card just like this. And they told us that we
3 were receiving the same tax building as their -- the way that
4 they nominate the facilities; the facilities are taxed under
5 72:8. The land, if you'll look across there, "Special Land
6 Value, Zero". So it's apparent when you look through these and
7 the special warrants that the -- that electric and gas
8 companies are being taxed for their building.

9 In other words, they're being taxed under 72:8 and the
10 Court need look no further than the New Hampshire Supreme Court
11 case which says specifically 72:8 has got nothing to do with
12 the real-estate tax. The real-estate tax that's being imposed
13 under 72:23 is not being imposed against the electric and gas
14 companies.

15 Bringing Your Honor to the closing point, and that is,
16 is that the municipalities argue 'we have a rational basis as
17 to why we can single Comcast out now for special treatment'.
18 They don't have that, Your Honor. What they have is an
19 argument justifying their unequal allocation. And it's not my
20 words, Your Honor, it's the words of Judge Rand (ph.), who was
21 the judge in the Conway case, and he specifically says
22 "Although making this good faith argument, the court finds that
23 the town has not asserted a legitimate governmental interest
24 that was furthered by its disparate treatment."

25 The reason being, Your Honor, is that the tax here is

1 a tax against real estate. Any rational basis -- any rational
2 distinction would have to start with why it is that the
3 telephone company's use and occupation of the real estate is
4 different than the others. And they can't do that, Your Honor.
5 In fact, the taxation, the unequal administration of the tax
6 against Comcast, has the exact same infirmities of taxing the
7 electric and gas companies under 72:8.

8 Certainly there are reasons that the town has for
9 singling the telephone company out. Those reasons are not a
10 rational basis, though, under the taxation scheme.

11 So with that, Your Honor, I'll close.

12 THE COURT: Thank you all.

13 While I will say decision reserved, I do want to point
14 out that I find the Rochester case is controlling and binding
15 and cuts across all of the issues here for determination.

16 With respect to the request for reconsideration and
17 vacating, I will deal with that in an opinion. However, I do
18 find that the grounds for vacature of the default do not really
19 exist. Nevertheless, even if I were to continue -- consider
20 the matter on the merits, I don't think that the merits are
21 demonstrated here. But I will issue opinions with respect
22 to -- on the five sisters and the other motion as well in due
23 course.

24 Thank you all.

25 (Recess from 11:46 a.m. to 12:23 p.m.)

1 THE COURT: Be seated, please.

2 MR. DESPINS: Good afternoon, Your Honor. Luc Despins
3 with Paul Hastings on behalf of FairPoint. With your
4 permission, if we could take one of the matters out of order,
5 which is the motion to extend exclusivity, it's not opposed,
6 and that way it probably could save a few dollars for the
7 estate by leaving the courtroom after we address that motion.
8 And also, I would give the Court an update on the case,
9 generally, as part of that motion. If that's acceptable --

10 THE COURT: Go ahead.

11 MR. DESPINS: -- okay. Your Honor, on August 20th we
12 filed a motion to extend our exclusive right to file a plan and
13 to solicit acceptances to that plan and to extend that period,
14 the first period to file a plan till October 22nd. Now, that
15 motion was adjourned several times, which is why you may
16 wonder, you know, we're here on the 20th, and we will need to
17 file another motion to extend exclusivity, and we will do so.
18 But that motion was filed, essentially, to preserve the status
19 quo. It's not opposed by anyone. And let me give the Court an
20 update on the case.

21 You'll recall that in June, Vermont -- the Board of
22 Vermont denied approval of the regulatory settlement. And in a
23 lengthy opinion which Your Honor has, the Board criticized
24 several elements, one of them being the financial forecast that
25 the company had prepared. As a result of that decision, the

1 company went back to the drawing board and prepared a bottoms-
2 up forecast, and there were some complicating factors there,
3 including the fact that we had a new CFO that joined in July; a
4 new CEO that joined in late August. But that effort --

5 THE COURT: But they got the same old counsel.

6 MR. DESPINS: That's true. I don't prepare forecasts,
7 but okay.

8 So what the company did is prepare that forecast. And
9 as a result of that effort, the company concluded that it
10 needed to get some modifications to the exit credit facility,
11 the one where the secured lenders modified, and modified in two
12 ways. One, a general relaxation or loosening of the covenants.
13 And also -- under that exit facility. And also, changing the
14 amortization schedule so that there would be pay-downs that
15 were scheduled under the original facility that would be pushed
16 back to later, in the later years.

17 And so therefore the company engaged the steering
18 committee in negotiation -- the steering committee of secured
19 lenders, represented by Willkie Farr, engaged them in a
20 negotiation which just concluded four or five -- four days ago
21 or so. And that led to us filing with the SEC through an 8-K
22 filing, which Your Honor was sent a copy of, a new letter
23 supporting a revised plan. And attached to the letter is a
24 term sheet with the principal terms of that revised plan.

25 The good news is that the banks did not insist on a

1 reduction or change in the distributions going to unsecured
2 creditors. So despite the concessions that they're making,
3 they did not ask for that. And therefore, that should make the
4 process much easier.

5 The game plan is, now that we're armed with that
6 agreement, we're going to file, we believe, sometime later
7 today, a renewed motion -- that's not the technical term, but
8 essentially it is a renewed motion -- with the Vermont Board,
9 to get approval of the regulatory settlement, armed with the
10 new forecast and this agreement with the banks.

11 We are asking the Ver -- we will ask the Vermont Board
12 for expedited consideration of that application. We are
13 hopeful that they will grant the expedited consideration and
14 the ultimate approval of the settlement. But that's within
15 their jurisdiction. And we will have to wait to see how it
16 plays out. If, in fact, they do approve it, then we will come
17 back to this Court as soon as possible to conclude phase 2 of
18 the confirmation process; phase 1 having taken place in May of
19 this year. And we're hopeful, at that point, that the Court
20 would confirm the plan. But that's premature in terms of
21 consideration by the Court.

22 So that's where we are. We are filing a motion to
23 extend exclusivity, yet another one, in a few days. And we
24 will ask for exclusivity to be extended through the end of
25 January. The motion that's before Your Honor today is really

1 to maintain the status quo so that there's no gap in the
2 exclusivity period. So I don't know if --

3 THE COURT: Does anyone want to be heard with respect
4 to the current motion?

5 MR. RECKMEYER: Hi. Jeremy Reckmeyer, Andrews Kurth,
6 on behalf of the creditors' committee. We have no objection to
7 the motion to extend exclusivity, but just wanted to note that
8 with respect to the matters filed in the 8-K with the SEC, the
9 letter agreement and the term sheet, we weren't provided with a
10 preview of any of that information, and we're still digesting
11 it to see whether or not we're, I guess, okay with the terms in
12 the term sheet. Thank you.

13 THE COURT: With respect to the current motion, the
14 application is granted.

15 MR. DESPINS: Thank you, Your Honor. And would just
16 point out that from their point of view -- and of course they
17 have to do their own due diligence on that -- but this should
18 be good news in the sense that there's no grab by the banks of
19 their distribution, which is, I think, a favorable outcome from
20 their point of view. But they'll have to determine that for
21 themselves. Thank you, Your Honor.

22 THE COURT: Mr. Grogan?

23 MR. DESPINS: May I be excused, Your Honor?

24 THE COURT: Yes.

25 MR. DESPINS: Thank you.

1 MR. GROGAN: Thank you, Your Honor. James Grogan,
2 again, for FairPoint. Your Honor, the next matter we were
3 going to take up is item 6 in the binder; FairPoint's second
4 omnibus motion to estimate maximum amount of proofs of claim.
5 And the particular claim at issue was filed by Mr. Isidoro M.
6 Flores.

7 Your Honor, the parties have submitted their briefing
8 on the issue. Just by way of background, Mr. Flores was hired
9 by FairPoint at the age of fifty-nine on December 7, 2007. He
10 was hired as a project lead for what FairPoint refers to as its
11 broadband network group. And he accepted that offer of
12 employment. In June of 2008, Mr. Flores was reassigned from
13 being a project lead for the broadband network group, so that
14 he was assigned primarily to work on methods and procedures
15 within broadband.

16 On March 31, 2009, approximately a year and a half
17 after he was hired, he was laid off as part of a cost reduction
18 that FairPoint underwent by eliminating staffing. Mr. Flores
19 was sixty years old at the time he was laid off. Your Honor,
20 he was not fired for cause. But he was an at-will employee
21 under state law and according to the terms of his employment
22 agreement.

23 He nevertheless filed a complaint with the New
24 Hampshire Human Rights Commission after his employment was
25 terminated. That complaint was filed on August 31, 2009. And

1 he alleged that he was discriminated against on the basis of
2 his age under the Federal Age Discrimination and Employment Act
3 and the New Hampshire Human Rights Act, which, incidentally, he
4 used the same standards for a cause of action.

5 Your Honor, as we've stated in our briefing, we don't
6 think that Mr. Flores has alleged --

7 THE COURT: Before you get to that, is there anybody
8 here on his behalf?

9 MS. WISEBERG: Most certainly.

10 MR. GROGAN: There is, Your Honor.

11 THE COURT: Okay, good. Good thing.

12 MS. WISEBERG: Good afternoon, Your Honor. Rochelle
13 Wiseberg.

14 MR. GROGAN: Your Honor, we don't think he's alleged
15 facts which are sufficient under the applicable case law and
16 the statute to prove that he was fired as the Supreme Court
17 said, because of his age. He has to show but-for causation.
18 But for the fact he was sixty years old, he would not have been
19 fired by FairPoint.

20 Now the facts that he alleges are essentially that at
21 an engineering forum, FairPoint's former CEO used the phrase
22 "Old Bell Head" in general. It was not directed at Mr. Flores,
23 it was just a general term. In fact that is a term of art used
24 in the telecommunications industry. It refers back to the fact
25 that AT&T used to operate through what it called its "Bell

1 operating companies". And so Bell Head is simply somebody who
2 has experience within telephone companies. They're sometimes
3 conferred to what are called "netheads" or people who have
4 experience with Internet protocols and Internet networking. It
5 has nothing to do with an animus toward older workers. In
6 fact, sixty-three percent of FairPoint's workers are at least
7 forty years-old, and would be within the provisions of the
8 ADEA.

9 In addition, the case law is clear that when you hire
10 an older worker like Mr. Flores, who was fifty-nine, and then
11 he loses his job within a short time frame -- we're talking
12 about one year -- there is a strong presumption that the fact
13 that he was a sixty year-old man was not the cause of his
14 termination. It's been well-reported that FairPoint has been
15 undergoing significant financial distress coming out of the
16 Verizon merger. This bankruptcy was filed within approximately
17 one year following the merger. FairPoint's largest cost item
18 is employees.

19 And further, if you look at the employee cost as a
20 whole, a significant portion of the employee cost are unionized
21 labor. Within the CBA, there are significant restrictions in
22 FairPoint's ability to just lay off unionized workers. So that
23 leaves, as a subset of people who are legitimately available
24 for a cost reduction, individuals who are exempt, non-
25 represented employees.

1 Now, what FairPoint did, like any business that is
2 undergoing financial distress, it looked at these employees for
3 possible duplications of effort. And in the context of
4 FairPoint's business, it had a methods and procedures group
5 that was under its networking support organization. That
6 group, headed by Terrance Horton, who's mentioned in the Human
7 Rights Commission report that the claimant has submitted, was
8 sixty-one years old. So when, by eliminating Mr. Flores'
9 position within methods and procedures under broadband, they
10 just were able to combine those functions with the methods and
11 procedures group within networking. And that was the economic
12 reason behind the consolidation.

13 There is no fact in any of Mr. Flores' submissions or
14 in the Human Rights Commission report, for that matter, that is
15 sufficient to show under the case law that there was an animus
16 toward older workers. They cite to -- apart from the reference
17 to "Old Bell Head", which has nothing to do with age, they also
18 cite to this LinkedIn profile. And that is not a -- that's
19 simply not a FairPoint sponsored site. It's no different than
20 Facebook. We don't have anything to do with LinkedIn. And to
21 go onto the LinkedIn profiles and just add up the age of the
22 people who participate in LinkedIn and then create an average,
23 is evidence of nothing except how old the people are who like
24 LinkedIn and work at FairPoint.

25 So, Your Honor, essentially, I'd ask the Court to

1 estimate the claim at zero dollars, because he hasn't proven
2 what he has to prove under the ADEA to state a claim for age
3 discrimination. Thank you, Your Honor.

4 MS. WISEBERG: Good afternoon, Your Honor. Rochelle
5 Wiseberg. I'm with the firm of Wayne Greenwald, P.C., of
6 counsel.

7 First off, Your Honor, I believe my colleague -- my
8 New Hampshire colleague was here before the Court early on in
9 August. And at that time, Your Honor held in abeyance any
10 decision regarding this matter, pending a resolution by the New
11 Hampshire Commission of Human Rights. What my colleague failed
12 to mention was, in fact, the Human Rights Commission did find,
13 and I quote, "The investigation assigned to the above-
14 referenced charge has made a finding of probable cause to find
15 age discrimination in employment."

16 There has been a finding. And Your Honor specifically
17 asked that this matter not go forward prior to that decision
18 being rendered. It has been rendered. No briefing schedule
19 has been conducted at this time, despite what my colleague has
20 stated. In fact, nothing has gone on. There were, apparently,
21 some level of negotiations regarding how to proceed with this
22 matter, because obviously, as Your Honor is aware, this man is
23 not a man of means, and we have a large corporation on the
24 other side, attempting to ride roughshod.

25 The New Hampshire Human Rights Commission was very

1 specific in their findings. They did in fact state that the
2 "Old Bell Head" term, which is derogatory, and witnesses for
3 Mr. Flores said that, in fact, that's how they understood it as
4 well. Moreover there was testimony given. There were facts
5 set forth -- and I can hand up a copy of the decision by the
6 New Hampshire Commission of Human Rights, if Your Honor cares
7 to review it -- which will, in fact, disavow all the statements
8 that have just been made by counsel.

9 We ask that at this time that the claim be estimated
10 at, at least a million dollars. The basis for our calculation
11 is statutory, amounting to at least 600,000 in back pay, plus
12 additional benefits, compensatory damages and punitive damages,
13 which at this point, have not been decided.

14 In terms of timing, this matter can be heard by the
15 Human Rights Commission within the next few months. There is a
16 briefing schedule already there. Moreover, if Your Honor feels
17 it is appropriate, we can make a motion to lift the automatic
18 stay and proceed in New Hampshire to bring this matter to
19 conclusion and to get an amount that would be utilized in the
20 proceeding.

21 I also want to mention to the Court that there is a
22 250,000 dollar deductible, which means that in reality,
23 FairPoint is only responsible for 250,000 dollars' worth of the
24 claim. The balance being picked up by the insurance company.
25 As I understand it, FairPoint is self-insured and there's a

1 250,000 dollar deductible.

2 I know you're reviewing -- may I hand up the New
3 Hampshire Human Rights decision?

4 MR. GROGAN: I think it's in the binder.

5 THE COURT: I think I already have it. I've just been
6 looking at it.

7 MR. GROGAN: It was attached as an exhibit.

8 THE COURT: Yes, I have it.

9 MS. WISEBERG: Okay. Moreover, there is one mention
10 in the pleadings that there's a certain standard that's being
11 followed by the Supreme Court, the Gross decision. In fact,
12 the Human Rights Commission has disavowed the decision by Gross
13 and has, in writing, stated that they are not going to be
14 following that standard.

15 We ask the Court to either sua sponte allow a lifting
16 for the stay and allowing us to proceed up in New Hampshire, or
17 in the alternative, to have a claim estimated at a million
18 dollars.

19 MR. GROGAN: Your Honor, on her last -- my opponent's
20 last point, I'd just ask to be given an opportunity to respond
21 to the lift stay motion, rather than having that heard on an
22 oral basis. So if she could -- if she wants to file one, we'll
23 certainly take that up at a future hearing and deal with
24 whether there's cause. But taking it up just sort of ad hoc
25 like this is inappropriate.

1 Your Honor, on the other points she raised.
2 Everybody's sympathetic to the fact that job losses in a
3 bankruptcy context, or when a company is headed toward
4 bankruptcy, are never positive. They're never something
5 anybody enjoys. These are unfortunate, difficult consequences
6 of a company in financial distress. But putting aside the sort
7 of he-said-she-said aspect of this, there are legal standards
8 which apply to govern the rights and remedies of a party who
9 has been laid off. And regardless of whether they're in --

10 THE COURT: Haven't they been construed by the New
11 Hampshire Commission?

12 MR. GROGAN: The New Hampshire Commission --

13 THE COURT: And that's sort of fact-intensive among
14 reasons, and I don't have any counter from you. It's all legal
15 argument that you're giving me at this point in time, legal
16 argument that's been construed by the New Hampshire Commission.
17 And I just wonder, since there is a question as to whether or
18 not this should be the subject, in some form of a lift stay,
19 for example, to let that process continue; or to deal with the
20 claims on the merits, which I think you're seeking to do at
21 this point in time, more than just merely estimating.

22 MR. GROGAN: Well, Your Honor, I --

23 THE COURT: Much as the -- that's much of the argument
24 you made in connection with the prior motion. Hey, it makes no
25 difference whether we deal with this under claims estimation or

1 as a claims allowance.

2 MR. GROGAN: Your Honor, I have my declarant here with
3 me, Mr. Medina, who we submitted his declaration. I'm happy to
4 proffer that as evidence. We can make him available for cross-
5 examination by opposing counsel. But the fact -- we put facts
6 into evidence that this was not a termination based on age. I
7 mean, he -- the New Hampshire Commission, frankly I just think
8 got it wrong. They misinterpreted the term "Old Bell Head".
9 It's not something that has any indicia of age animus by the
10 company. I've also offered you exhibits from journals that use
11 the term for the Verizon CEO. It's certainly not derogatory.
12 Mr. Medina --

13 THE COURT: Well, I don't know that it's derogatory.
14 One of my very close friends I've always referred to as a Bell
15 Head, but --

16 MR. GROGAN: You know -- would you like me to put Mr.
17 Medina on and we'll let him testify?

18 MS. WISEBERG: Your Honor, with all due respect, Mr.
19 Medina's testimony is not going to be sufficient, because I
20 want to cross-examine all the other witnesses that were
21 involved in New Hampshire. I have my witness here. He can
22 most certainly do so. There are witnesses up in New Hampshire
23 that testified, and we obviously would like to bring them down.
24 I think it's cost prohibitive to do all that.

25 This is not something where Mr. Medina can give all

1 the answers, because he's not -- he was not the person who was
2 man on point. He was not involved in all aspects of Mr. -- of
3 my client's --

4 THE COURT: He can testify as to the contents of his
5 affidavit.

6 MR. GROGAN: Sure.

7 MS. WISEBERG: But that -- Your Honor, I ask that we
8 be given sufficient time to prep for this, because this is --

9 THE COURT: You have a witness here as well.

10 MS. WISEBERG: Yes. But the fact that --

11 THE COURT: That's all the ingredients for a trial.

12 MS. WISEBERG: Right. But Your Honor, the fact still
13 remains that we have a right to brief this. It was not
14 briefed. Your Honor specifically said in August that you were
15 waiting for a decision from the Human Rights Commission.

16 THE COURT: That's the only new entry into this
17 controversy is that decision.

18 MS. WISEBERG: And the Human Rights --

19 THE COURT: But other than that, I'm prepared to go
20 forward.

21 MR. GROGAN: Okay.

22 THE COURT: But I think that both sides should have an
23 opportunity. And if there is the issue with respect to the
24 findings of the commission, then perhaps your adversary is
25 right. It should be briefed. And if you're going to play in

1 the sandbox of 362, deal with that as well. Or maybe that's a
2 preliminary issue.

3 MS. WISEBERG: We'd like to make a motion to lift the
4 stay. So, you know, I would like to do that as well, being
5 given all these options. This is not an issue to be resolved
6 today.

7 MR. GROGAN: Your Honor, going through the lift-stay
8 factors, we've got a quarter million dollar self-insured
9 retention. So this is not something we would have dollar-one
10 insurance. We're out of pocket. We're here for trial today on
11 this matter. This has been lingering out there for literally
12 months now.

13 THE COURT: I will agree with you on that.

14 MR. GROGAN: There's no reason to be going back and
15 forth. It's just ramping up the cost by going back to the
16 State of New Hampshire now.

17 MS. WISEBERG: I disagree. I think that there are
18 numerous witnesses that would be better testifying in New
19 Hampshire; the people that are the little people who can
20 testify as to the facts, and which the Human Rights Commission
21 relied upon.

22 THE COURT: Well, I'll deal with the lift stay aspect,
23 frankly, because there has been so much in the way of pleadings
24 placed before this Court, every issue has been raised. And to
25 the extent that there are factual issues here, and the

1 applicable law being easy to apply with respect to the facts
2 here, I will deny the lift-stay request if it's just been made
3 orally. But I will open the --

4 MS. WISEBERG: We would like to come in by motion.
5 I'm advising the Court that's something we'd like to do. We've
6 made every effort to reach an amicable resolution. Obviously,
7 under 408 --

8 THE COURT: You could have made that motion
9 previously. What I have before me, as I've indicated, is a
10 rather comprehensive set of pleadings. And if you want an
11 opportunity to have a trial with your witnesses, I'm granting
12 you that opportunity. Get an adjourn date.

13 MR. GROGAN: Okay. To come back for live testimony?

14 THE COURT: Yes, for live testimony.

15 MR. GROGAN: Okay. All right, Your Honor, we'll
16 confer with chambers and --

17 THE COURT: Fine.

18 MR. GROGAN: -- take it up. Thank you, Your Honor.

19 MS. WISEBERG: Thank you, Your Honor.

20 THE COURT: Who was your witness, by the way?

21 MS. WISEBERG: My client.

22 THE COURT: What?

23 MS. WISEBERG: My client.

24 MR. GROGAN: You know --

25 MS. WISEBERG: He's come all the way down from New

1 Hampshire, Your Honor.

2 THE COURT: Good.

3 MR. GROGAN: I'm okay doing this now.

4 MS. WISEBERG: I'm not.

5 THE COURT: Well, she's not.

6 MS. WISEBERG: I'm not.

7 MR. GROGAN: Okay. All right.

8 MS. WISEBERG: I'll consult with my colleague and make
9 sure that we have an agreeable date with the Court.

10 THE COURT: Sure.

11 MS. WISEBERG: I appreciate your time, Your Honor.

12 Thank you. May I be excused?

13 THE COURT: Yes.

14 MR. GROGAN: All right. Your Honor, I think the next
15 item we have is -- the next contested matter is actually my
16 Rule 2004 motion to take discovery from segNET and segTEL.
17 That's actually number 11 in the binder.

18 Your Honor, just for background, segNET and segTEL are
19 compe -- well, segTEL is a competitive local exchange carrier;
20 segNET is an Internet service provider. Both of them purchased
21 services from FairPoint. segTEL would purchase services from
22 FairPoint under contracts and tariffs, as would segNET.

23 Your Honor, they filed claims -- if you'd just take
24 the aggregate amount of the claims, and just add up what's in
25 the proof of claims, they're more than five million dollars.

1 The claimants have now said, we agree that a portion of the
2 claim actually is just -- are disputed invoices that FairPoint
3 sent us. We don't want to pay FairPoint this money, so we put
4 it into our proof of claim. It's not as if we're asking for
5 payment of this. But that still leaves about three and a half
6 million dollars that they actually want to collect from the
7 estate.

8 We disagree with everything in the proofs of claim.
9 There's no point of agreement. The claims are things like --
10 they want damages for failure to provide access to manhole
11 breakouts. They want damages for failure to provide access to
12 central offices. They want damages for any competitive
13 conduct, discriminatory pricing.

14 So the Rule 2004 motion was targeted on these
15 allegations, simply to identify where's the contract where
16 FairPoint promised to give you unfettered access to the central
17 office? Where's the piece of paper that says that you're going
18 to have access to the manhole breakout? And if they have none,
19 then we have a right to obtain that information through the
20 discovery process. And then we'll come back as promptly as
21 possible and bring that to Your Honor's attention with our
22 objection to their claim.

23 Their response seems to be, Your Honor, our claims are
24 beyond scrutiny, because you have our word that we're owed
25 three and a half million dollars, and our word is our bond.

1 Well, that isn't good enough. I mean, we have a statutory duty
2 as debtors-in-possession to investigate and object to claims
3 that are improper. And there is zero evidence at this point
4 that supports the damages that these two claimants are trying
5 to collect.

6 Now, Your Honor, there is some debate in the papers
7 themselves as to whether or not they actually gave us evidence.
8 Now, what they gave us was basically a spreadsheet with billing
9 disputes. These are -- they make much about the fact that they
10 gave us thousands and thousands of data points. All of this
11 paper is simply -- it identifies a FairPoint bill -- this is
12 FairPoint's claims against them -- and then it says that the
13 description is, we disagree with the charge. So they write,
14 FairPoint billed \$10.66 for this particular circuit, and they
15 say that the charge should have been \$6.00. This isn't
16 evidence of their claim.

17 Your Honor, I have all of this, if Your Honor would
18 like to look at it, for in camera review. It was submitted to
19 us on a confidential basis, so we haven't put it into the
20 record. But this is the thousands of line items of information
21 that we received. And then in addition to that, the only other
22 thing we received was basically their own internal notes as to
23 why they're owed all of these millions of dollars.

24 FairPoint sent some correspondence over saying tell us
25 whether or not you've submitted any documentation regarding

1 failure to convert T1s to UNIs; segNET wants 58,888 dollars for
2 this. And so segNET comes back with a self-serving statement
3 that we gave this information previously. I mean, it's just --
4 it's not useful at all. There's no contract; there's no
5 written document; there's no promise; there's no e-mail,
6 nothing which ever says that FairPoint hereby promises to pay
7 segNET 58,880 dollars if it fails to convert a T1. And there's
8 no statutory duty to do any of this either.

9 So you know, Your Honor, we just intend to take the
10 discovery. We're not going to dally about it. Nothing in the
11 discovery request was abusive or overbearing. It was targeted
12 for the allegations in the proof of claim. If they have no
13 evidence, then counsel to segNET and segTEL can just simply
14 stipulate on the record that this set of documents that I have
15 here is all that there is, and we will proceed with our
16 objection on that basis.

17 Your Honor, I'll turn it over to counsel for the
18 claimants.

19 MS. THOMAS: Good afternoon, Your Honor. Jeanette
20 Thomas from Perkins Coie, here on behalf of segTEL and segNET
21 Technologies, Inc.

22 Your Honor, I think that what we need to do is first
23 sort of level set where we are with this hearing. And I think
24 that unfortunately, much of what has proceeded before me in
25 this Court, that we're talking about a procedural question

1 here. And the question is whether 2004 is the appropriate
2 methodology for the debtors to get the discovery. I note that
3 the debtors --

4 THE COURT: I tend to go beyond the procedure and get
5 to the merits of the controversy. And I will tell you that I
6 am and I have been, for thirty-plus years, disturbed over the
7 license that's taken with respect to the filing of claims. And
8 there's a legend -- and I've looked at it twenty years ago, and
9 I don't imagine it's changed -- at the bottom of every proof of
10 claim which refers to Title 18 (152)(4) which should be
11 cautionary and get people to be very precise with the filing of
12 a claim; just what the claim is all about. And whether that
13 legend is still there on the particular proof of claim or form
14 that you used, it makes no difference, because Title 18 is
15 still there.

16 And the point that I'm trying to make is, we shouldn't
17 have to go through all of this process to find out what you're
18 really asking for in a proof of claim. And I'm constrained,
19 based upon what I looked in physically as the size of the claim
20 that you filed, without any real roadmap, as I understand it.
21 I look at that, and I'm constrained as a matter of policy, to
22 allow the 2004 to go forward and just see if we can get right
23 to the heart of what you're really asking for.

24 MS. THOMAS: Your Honor, I don't disagree that the
25 underlying proof of claim needs to be addressed. I will tell

1 you that in fact, we did provide --

2 THE COURT: In my mind --

3 MS. THOMAS: -- a roadmap.

4 THE COURT: -- will a 2004 examination cut to the
5 chase and get everybody to understand what the real claim was
6 all about, or won't it? And I see here that it probably will.
7 It should cut away a lot of, let's call it -- I won't use the
8 term garbage, perhaps, because I see a lot of that in a lot of
9 the proofs of claim that come in here.

10 MS. THOMAS: I understand that, Your Honor. I mean, I
11 do understand that. I don't think that that's the case here.
12 And we're not opposed to discovery. I mean, what the motion
13 failed to address was that we had been engaged in an informal
14 discovery process, and we provided this information. And Mr.
15 Grogan can take issue with what we provided. But his client
16 never came back and asked us for more. And I would posit that
17 to the extent that you are saying that, look, under tariff,
18 you're allowed to charge me X dollars, and you charged me Y
19 dollars, what evidence am I going to prove for that? I mean
20 the tariff says X and you charged Y.

21 I mean, it's a matter of a legal analysis of looking
22 at the bills, looking at the law and understanding them. It's
23 not, like Mr. Grogan suggested --

24 THE COURT: Ultimately, I'm going to be the trier of
25 the facts, and if you're going to leave all of that to me, you

1 do that at your peril. I'm allowing the examination to go
2 forward.

3 MS. THOMAS: Your Honor, I mean, I guess my -- our
4 point was not --

5 THE COURT: If you can't comply, if unreasonable
6 questions are asked, you can always come back. We have a
7 procedure for that. But I don't find enough here to, in
8 advance, quash the examination that's being requested.

9 MS. THOMAS: It seems to me that the more appropriate
10 means of doing this is pursuant to--

11 THE COURT: The motion is granted.

12 MR. GROGAN: Thank you, Your Honor.

13 MS. THOMAS: Your Honor --

14 THE COURT: Next time, come up with a five-page proof
15 of claim.

16 MS. THOMAS: -- Your Honor, we have -- each proof of
17 claim is five pages long. It is particularly -- we have fifty
18 subparts in our proof of claim.

19 THE COURT: Oh.

20 MS. THOMAS: Each one, with a specified dollar amount,
21 down to the penny. I mean, it's not like we didn't spend --

22 THE COURT: I'm not like the Bank of America that can
23 pass on all those documents in a hairsbreadth.

24 MS. THOMAS: But it's not like we filed a proof of
25 claims that said we're owed X dollars and didn't support

1 anything.

2 THE COURT: I've just ruled. If you want to take me
3 up on appeal, please do.

4 MS. THOMAS: That's not my point, Your Honor. My
5 point was that the proofs of claim that we filed actually
6 provided --

7 THE COURT: The application is granted.

8 MS. THOMAS: I understand.

9 THE COURT: Okay.

10 MS. THOMAS: Your Honor, in my motion I had also -- in
11 my reply I had a request for appointment of a mediator to
12 resolve these issues. These parties are --

13 THE COURT: The issues on discovery?

14 MS. THOMAS: On the claims themselves actually. And I
15 understand that the debtors now oppose that motion and they've
16 raised the procedural argument that I needed to give twenty-one
17 days. And that being aside, when they filed the estimation --

18 THE COURT: Let's get through the discovery process
19 and then --

20 MR. GROGAN: Yes, what are we --

21 THE COURT: -- when everything is narrowed down, I
22 might consider whether or not a mediator is appropriate.

23 MR. GROGAN: Thank you, Your Honor. Your Honor, the
24 remainder of the items on the docket are uncontested, so it
25 should be fairly brief from this point forward.

1 Your Honor, going back to number 2 on the agenda, we
2 had filed a motion for authorization to assume -- I'm sorry, I
3 cut off my own microphone. We had filed a motion to assume a
4 contract that FairPoint has with Nitel Inc. That was filed at
5 docket number 1788. No responses were received.

6 Your Honor, this motion deals with a contract that is
7 very important to the business. It's a networking contract
8 that FairPoint uses to build out its communication systems.
9 The motion is actually the product of a significant negotiation
10 between the parties. Nitel has agreed to a large reduction in
11 the actual cure amount that would be paid. It's come down by
12 about 30,000 dollars. We've also gotten pricing concessions on
13 a going-forward basis.

14 So, Your Honor, we think that this is a good result,
15 and we'd ask the Court to approve the assumption of the
16 contract.

17 THE COURT: Anyone want to be heard? Your application
18 is granted. There's no response.

19 MR. GROGAN: Thank you, Your Honor. Your Honor, the
20 next item we have is the claim of the Bucks. This actually is
21 a -- it was subject to our second omnibus motion to estimate.
22 We have resolved that claim. We have an agreed order. It was
23 claim number 7922. It was filed against Telephone Operating
24 Company of Vermont. The agreement between the parties provides
25 that this claim will be allowed as a 43,000 dollar general

1 unsecured claim. The Bucks had one other claim which will be
2 expunged. Your Honor, I think this is pretty straightforward.
3 We'd ask you to enter the order allowing that claim at 43,000
4 dollars. It would be treated as a Class 6 claim, by the way,
5 for purposes of the plan against Telephone Operating Company of
6 Vermont.

7 THE COURT: Does anyone want to be heard? There's no
8 response. The application is granted.

9 MR. GROGAN: Thank you, Your Honor.

10 (Pause)

11 MR. GROGAN: Your Honor, the next item is number 7 in
12 the binder -- number 7 on the agenda. Your Honor, this is --
13 we've resolved an objection that we had filed to claims filed
14 by several affiliates of One Communications: Choice One
15 Communications of Maine, Inc.; Choice One of New Hampshire,
16 Inc.; Conversant Communications of Maine LLC; Conversant
17 Communications of New Hampshire LLC; CTC Communications Corp.;
18 and Lightship Telecom LLC.

19 Your Honor, in the aggregate, these claims were
20 actually the largest unsecured disputed claims that we have.
21 We have resolved them, and we think it's a very favorable
22 result for the estate. So we have a stipulated order to hand
23 up. I'll run through the provisions of the stipulation. I
24 think counsel for One Communications and its affiliates is also
25 here and I'll let him say anything at the end that he wants to

1 add.

2 THE COURT: That's kind of you.

3 MR. GROGAN: Your Honor, the stipulated order provides
4 that One Communications will actually pay FairPoint 3,784,282
5 dollars. The resolution of claims is effective for basically
6 disputes -- billing disputes and other invoiced amounts through
7 August 1 of 2010. Now, there's a toggle in the stipulation,
8 because we have some concern regarding One Communications'
9 financial soundness, I'll say. The 3.78 million is actually
10 going to -- there will be an initial installment, but then we
11 had to put them on payment terms. So what we negotiated as a
12 protection for the estate, in case there's a default or a
13 bankruptcy or whatever by some of these affiliates of One
14 Communications, is that if they don't pay all the money due
15 when its due, the Court's order here, the stipulated order,
16 will actually be treated as a judgment for the full amount of
17 FairPoint's original asserted claims against One
18 Communications.

19 That judgment could then be brought back to this Court
20 for execution against One Communications. And the releases
21 that we are giving them from our action -- for our claims
22 against them, will not go into effect until all the money has
23 been indefeasibly paid to FairPoint. And we actually put that
24 at ninety-two days after we get the last check, so that we are
25 protected from any potential preference that they may allege if

1 they wind up going into a Chapter 11 or Chapter 7.

2 So it's just some added protections that we built in
3 for the estate. One Communications agreed to that. So other
4 than that, I think the rest of the terms are fairly standard.
5 Assuming they pay everything when due and as they've promised
6 to do, they will get their release as of August 1st. They
7 will, at that point, have a zero balance on all accounts with
8 FairPoint. So I don't know if counsel for One wants to add
9 anything.

10 MR. ALDERSON: Just real quickly. Mr. Gro -- I'm
11 Jason Alderson, Kelley Drye on behalf of One Communications.
12 He mentioned the deemed judgment in the full amount of
13 FairPoint's claims against One. I just wanted to add that in
14 provision 11, the deemed judgment, if you will, can only be
15 enforced up to 4.684 million and change. Just a point of
16 clarification I wanted to add. Thank you.

17 THE COURT: Thank you.

18 MR. GROGAN: Okay. Your Honor, unless you have any
19 questions or --

20 THE COURT: Does anyone want to be heard? The
21 application is granted.

22 MR. GROGAN: Thank you, Your Honor. Your Honor, the
23 next item that we have, TD Bank, item number 9. Just for
24 clarification, I think there was actually a little mistake in
25 the agenda. Item 8 actually is not going forward. It should

1 have been moved to the adjourned items, because all of those
2 matters are adjourned. So we'll move to item 9.

3 We had filed an objection to claims filed by one of
4 our claimants, TD Bank. TD Bank, it's effectively customer
5 claims. They were asserting their right to some credits on
6 their bills. We've worked through the billing disputes with
7 them and we have an agreed order to hand up. The proofs of
8 claim at issue are claim numbers 4817, 4818 and 4819. Each of
9 those was filed in the amount of \$837,915.49.

10 According to the stipulation or the agreed order,
11 we're going to issue a new billing credit on an account that TD
12 Bank maintains with FairPoint, in the amount of \$345,460.52.
13 We're also -- TD Bank has also agreed to release payment holds
14 that it was -- that it had applied to FairPoint's current
15 billing cycle. So hopefully, they will begin paying all the
16 amounts that they owe when due and as due, going forward.

17 And that is -- that's the sum total of that agreement.
18 There's no releases. It's just purely a resolution of the
19 customer accounts.

20 THE COURT: The application -- the stipulation and
21 agreed order is approved.

22 MR. GROGAN: Thank you, Your Honor. Your Honor the
23 next item on is the objection to claims filed by Ronco. That
24 was at the sixty-fourth omnibus objection to claims, docket
25 number 1440. Your Honor, this is a very straightforward

1 resolution of that claim objection. They had several claims
2 that were duplicative: claim numbers 5794, 5795, 5913, 5914,
3 5926 and 5954. All of those are disallowed and expunged.
4 Proof of claim number 5896 will remain and that'll be treated
5 as a general unsecured claim in Class 6 against Northern New
6 England Telephone Operations. And it will be reduced from
7 \$50,704.96 to \$20,000.

8 Your Honor, unless you have any questions, we have an
9 agreed order to that effect.

10 THE COURT: I have none. The order is approved.

11 MR. GROGAN: Thank you, Your Honor. Your Honor, let
12 me just go through my notes real quick, but I think that
13 concludes our presentation.

14 THE COURT: Do you have orders with --

15 MR. GROGAN: I do, Your Honor.

16 THE COURT: -- respect to each of the applications
17 I've approved?

18 MR. GROGAN: Let me just check. I might have to
19 submit -- let me confer with my lawyer real quick.

20 (Pause)

21 MR. GROGAN: Okay. Your Honor, I'll need to submit an
22 order to chambers for segTEL and --

23 THE COURT: I think you already have one on segTEL.

24 MR. GROGAN: Well, I think there was one attached to
25 the motion. Oh, it's up there?

1 THE COURT: Yes.

2 MR. GROGAN: Okay. I wasn't aware of it. Okay. The
3 rest of them should be here.

4 THE COURT: Unless that's your adversary's submission?
5 (Pause)

6 THE COURT: Check with chambers on it.

7 MR. GROGAN: Okay. All right, Your Honor. I think
8 that concludes our hearing. Thank you.

9 THE COURT: Thank you all.

10 (Whereupon these proceedings were concluded at 1:15 p.m.)
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I N D E X

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a
true and accurate record of the proceedings.

PENINA WOLICKI

Veritext

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Date: October 28, 2010